

)	CASE NO.
)	
Plaintiff,)	
)	
v.)	MAGISTRATE JUDGE
)	NANCY A. VECCHIARELLI
)	
)	NOTICE AND ORDER
Defendant.)	CASE MANAGEMENT CONFERENCE

LEAD COUNSEL AND PARTIES MUST BE PRESENT
UNLESS EXCUSED BY THE COURT UPON WRITTEN MOTION

Counsel are advised that the Court hereby orders that all further documents, notices and orders in this matter be filed electronically rather than on paper, except as provided for in the Electronic Filing Policies and Procedures Manual, which governs electronic filing in the Northern District of Ohio and also provides helpful information on system requirements and usage. The manual can be accessed at the following link:

Notice of filings are sent electronically. It is the responsibility of each counsel of record to set up his or her user account to receive e-mail notification and to check his or her e-mail box on a regular basis. Directions for setting up e-mail notification are at the following link:

http://www.ohnd.uscourts.gov/Electronic_Filing/ECF_Email/ecf_email.html

The Clerk's Office has established an Electronic Filing Help Desk at 1-800-355-8498 to answer questions and provide assistance should difficulties arise.

SCHEDULING OF CASE MANAGEMENT CONFERENCE

All counsel and/or parties will take notice that the above-entitled action has been set for a Case Management Conference ("CMC") on [REDACTED], 2010 at [REDACTED] m. before Magistrate Judge Nancy Vecchiarelli, Chambers 10B, United States Courthouse, 801 W. Superior Avenue, Cleveland, OH 44113.

Local Rule 16.3(b) requires the attendance of both parties and lead counsel. "Parties" means either the named individuals or, in the case of a corporation or similar legal entity, that person who is most familiar with the actual facts of the case. "Party" does not mean in-house counsel or someone who merely has "settlement authority." **If the presence of a party or lead counsel will constitute an undue hardship, a written motion to excuse the presence of such person must be filed on or before five (5) business days of the conference. Parties are expected to attend and will not be excused routinely.**

TRACK RECOMMENDATION

Pursuant to LR 16.3(a), and subject to further discussion at the CMC, the Court recommends the following track:

- | | | |
|--|------------------------------------|---|
| <input type="checkbox"/> Expedited | <input type="checkbox"/> Standard | <input type="checkbox"/> Administrative |
| <input type="checkbox"/> Complex | <input type="checkbox"/> Mass Tort | |
| <input checked="" type="checkbox"/> Recommendation reserved for CMC. | | |

APPLICATION OF FED. R. CIV. P. 26(a)

Rule 26(a) of the Federal Rules of Civil Procedure, as amended December 1, 2000, mandates a series of required disclosures by counsel in lieu of discovery requests unless otherwise directed by order of the Court.

In the above-entitled case, Rule 26(a) shall apply as follows:

_____ All disclosures mandated by Rule 26(a) shall apply, including Initial Disclosures (Rule 26(a)(1)), Disclosure of Expert Testimony (Rule 26(a)(2)), and Pre-Trial Disclosures (Rule 26(a)(3)).

_____ Initial Disclosures (Rule 26(a)(1)) shall not apply; Disclosure of Expert Testimony (Rule 26(a)(2)) and Pre-Trial Disclosures (Rule 26(a)(3)) shall apply.

CONSENT TO JURISDICTION OF MAGISTRATE JUDGE

Magistrate Judge Vecchiarelli has been assigned to assist in this case. The parties are encouraged to discuss and consider consenting to the jurisdiction of the Magistrate Judge. The parties have consented to the jurisdiction of the Magistrate Judge.

PREPARATION FOR CMC BY COUNSEL

The general agenda for the CMC is set by LR 16.3(b). Counsel for the plaintiff shall arrange with opposing counsel for the meeting of the parties as required by Fed. R. Civ. P. 26(f) and LR 16.3(b). A report of this planning meeting, including a proposed discovery plan, shall be jointly signed and submitted to the Clerk for filing not less than 7 days before the CMC. The report shall be in a form substantially similar to Attachment 1.

As part of their pre-CMC planning conference, counsel must determine whether there will be discovery of electronically stored information (ESI) [E-discovery]. If counsel anticipate any E-discovery, they must decide on a method of conducting such discovery or they must agree to

abide by the default standard set forth in Appendix K to the Local Civil Rules.

DISCLOSURES UNDER FED. R. CIV. P. 26(a)

_____ This is an ERISA case (Employee Retirement Income Security Act of 1974) and, as such, is not subject to disclosures. See Fed. R. Civ. P. 26(a)(1)(E). Counsel shall instead familiarize themselves with the procedure set forth in *Wilkins v. Baptist Healthcare System, Inc.*, 150 F.3d 609, 619 (6th Cir. 1998) (Gilman, J., concurring). This is the procedure that will be followed in all ERISA matters.

FORMAL DISCOVERY STAYED UNTIL CMC

Pursuant to LR 26.2, counsel are reminded that no preliminary formal discovery may be conducted prior to the CMC except "such discovery as is necessary and appropriate to support or defend against any challenge to jurisdiction or claim for emergency, temporary, or preliminary relief[.]" This limitation in no way affects any disclosure required by Fed. R. Civ. P. 26(a)(1) or by this order.

FILING OF DISCOVERY MATERIALS

(Fed. R. Civ. P. 5(d))

Unless otherwise ordered by the Court, disclosures under Fed. R. Civ. P. 26(a)(1) or (2) and the following discovery requests shall not be filed until they are used in the proceeding or this Court orders filing: (1) depositions; (2) interrogatories; (3) requests for documents or to permit entry upon land; and (4) requests for admission.

If a party intends to rely on deposition testimony in support of its position on a motion, the Court prefers the filing of the entire deposition rather than excerpts, unless the party truly believes that excerpts are sufficient, and with the proviso that any other party who believes the excerpts offered are not sufficient is free to file the entire deposition. In any event, discovery and

disclosure material submitted in support of any party's position shall be filed at the same time as that party's memorandum setting forth its position.

DEPOSITIONS PRACTICE

The Judges of the Northern District of Ohio have adopted LR 30.1 which governs the taking of depositions. Counsel are expected to comply with the rule in its entirety.

OTHER DIRECTIVES

In all cases in which it is anticipated that a party or parties will seek attorney's fees pursuant to statutory or case-law authority, such party shall file with the Court at or prior to the CMC a preliminary estimate and/or budget of the amount of fees and expenses anticipated to be the subject of any such claim. Such estimate shall include, but not be limited to, the following:

<u>Attorney's Fees</u>		<u>Costs</u>	
Preliminary Investigations & Filing of Complaint	\$ _____	Depositions	\$ _____
Procedural Motions Practice	\$ _____	Experts	\$ _____
Discovery	\$ _____	Witness Fees	\$ _____
Dispositive Motions Practice	\$ _____	Other	\$ _____
Settlement Negotiations	\$ _____		
Trial	\$ _____		
TOTAL FEES	\$ _____	TOTAL COSTS	\$ _____
_____		_____	
_____		_____	
_____		_____	
_____		_____	

RESOLUTION PRIOR TO CMC

In the event that this case is resolved prior to the CMC, counsel should submit a jointly signed stipulation of settlement or dismissal, or otherwise notify the Court that the same is forthcoming.

IT IS SO ORDERED.

Date:

s/ Nancy A. Vecchiarelli
NANCY A. VECCHIARELLI
UNITED STATES MAGISTRATE JUDGE